

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 1, 2000 Session

**MARIE CROWNOVER v. FREDIA WADLEY, COMMISSIONER
TENNESSEE DEPARTMENT OF HEALTH, BUREAU OF TENNCARE**

**Appeal from the Chancery Court for Davidson County
No. 99-1387-II Carol L. McCoy, Chancellor**

No. M1999-02389-COA-R3-CV - Filed January 22, 2001

This appeal involves judicial review of an administrative decision. The issue on this appeal is whether the chancery court properly dismissed this case based on the Petitioner's failure to timely file the Petition for Review within the sixty (60) day requirement pursuant to T.C.A. § 4-5-322(b)(1). The Tennessee Department of Health, Bureau of TennCare denied the Petitioner coverage for adult dental services. The Petitioner appealed the denial which resulted in an administrative hearing in which the denial of benefits was upheld. Next, the Petitioner filed a Petition for Review in the Chancery Court for Davidson County sixty-three (63) days after the entry of the final order. The Respondent filed a motion to dismiss. The motion to dismiss was granted on jurisdictional grounds. We affirm the order of dismissal because the Petitioner did not file her petition within the sixty(60) day mandatory, jurisdictional requirement.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Debra L. House, Cleveland, Tennessee, for the appellant, Marie Crownover.

Paul G. Summers, Attorney General and Reporter; John W. Dalton, Assistant Attorney General, Nashville, Tennessee, for the appellee, Fredia Wadley, Commissioner Tennessee Department of Health, Bureau of TennCare.

OPINION

The Petitioner sought TennCare coverage for adult dental benefits which are generally not covered. TennCare denied coverage. After benefits were denied, the Petitioner filed an appeal of the denial. An administrative hearing was held on December 16, 1998. On March 15, 1999, the

Administrative Law Judge's order denying coverage became final. The Petitioner had until May 14, 1999 to file her petition for review in the Chancery Court of Davidson County..

On May 17, 1999, the sixty-third (63rd) day after entry of the administrative law judge's final order, the Petition for Review was filed in the Chancery Court for Davidson County. The Petitioner's lawyer mailed the Petition for Review via overnight mail on May 13, 1999, the fifty-ninth (59th) day of the sixty (60) day period. The Petitioner assesses fault that the petition was received later than May 14, 1999 on the process in which the courthouse receives incoming mail. The Petition for Review was not received in the Clerk and Master's office of Davidson County on the required date, May 14, 1999. Instead, it was received on May 17, 1999, three (3) days beyond the statutory deadline.

On June 24, 1999, the Respondent filed a motion to dismiss the petition for failure to comply with T.C.A. § 4-5-322(b)(1) which required that the petition be filed within sixty (60) days of entry of the final order. An Order of Dismissal was entered on August 27, 1999, in the chancery court stating in part:

In this case, the final order of the Department of Health became effective on March 15, 1999. Ms. Crownover, therefore, had until May 14, 1999, 60 days after entry of the final order, to file a petition for review. Ms. Crownover's petition for review was filed in Davidson County Chancery Court on May 17, 1999, which was 63 days after entry of the final order. Therefore, the petition was not timely filed pursuant to T.C.A. Section 4-5-322. Ms. Crownover's failure to have a petition for review filed withing the 60-day 'statute of limitations' constitutes a jurisdictional defect which deprives this [c]ourt of statutory authority to review the record in this case.

On September 14, 1999, the Petitioner appealed to this Court asserting that the trial court erred in dismissing the Petition for Review and, seeking a determination that the petition was timely filed. We affirm the Order of Dismissal.

Pursuant to the Uniform Administrative Procedures Act, "[a] person who is aggrieved by a final decision in a contested case is entitled to judicial review" TENN. CODE ANN. § 4-5-322 (a)(1). The procedure for obtaining judicial review is contained in T.C.A. Section 4-5-322(b)(1) which provides that "[p]roceedings for review are instituted by filing a petition for review in the chancery court of Davidson County . . . [s]uch petition shall be filed withing sixty (60) days after the entry of the agency's final order thereon." TENN. CODE ANN. § 4-5-322 (b)(1).

Therefore, to obtain judicial review of the administrative judge's decision denying TennCare coverage for the Petitioner's adult dental care, the Petitioner had to file a petition for review in the chancery court withing sixty (60) days of the decision. In the case at bar, the administrative agency's final order denying coverage became effective on March 15, 1999. The Petition for Review was filed on May 17, 1999, sixty-three (63) days after the entry of the final order, clearly not within the allowed time period.

“The sixty (60) day time limit for filing a petition for judicial review is a jurisdictional prerequisite to obtain a review of an agency’s decision.” *Bishop v. Tennessee Dep’t of Correction*, 896 S.W.2d 557 (Tenn. Ct. App. 1994); *See also Schering-Plough Healthcare Products, Inc. v. State Board of Equalization*, 999 S.W.2d 773, 776 (Tenn. 1999); *See also Frazier v. Whisman*, No. M1997-00225-COA-R3-CV, 2000 WL 988187, at *2 (Tenn. Ct. App. July 19, 2000); *See also Davis v. Tennessee Dep’t of Employment Security*, 23 S.W.3d 304, 307 (Tenn. Ct. App. 1999); *See also United Steel Workers of America v. Tennessee Air Pollution Control Board*, 3 S.W.3d 468, 472 (Tenn. Ct. App. 1998) (stating that the 60 day deadline is mandatory and jurisdictional and the failure to comply with it is fatal); *See also HRA Inc. v. Tennessee Dep’t of Commerce and Insurance*, 914 S.W.2d 512, 515 (Tenn. Ct. App. 1995).

The Petitioner relied upon two cases to convince this Court that T.C.A. Section 4-5-322(b)(1) should not prohibit subject matter jurisdiction, both of which are unpersuasive in the instant case. The first of the cases is *General Electric Supply Company v. Arlen Realty & Development*. That case dealt with a materialmen’s lien on realty stating that the “Tennessee Rules of Civil Procedure should be interpreted to prevent parties from having their claims time-barred as a result of actions of the trial court clerk or other officials over whom they have no control.” *General Electric Supply Company v. Arlen Realty & Development*, 546 S.W.2d 210, 214 (Tenn. 1977). In this case, the Petitioner and her attorney were the persons who had control over when the petition was filed. It is not the clerk and master’s responsibility and burden to ensure mail delivery of the post office. Rather, it is the Petitioner and her counsel’s ultimate responsibility to ensure timely delivery.

The second case relied upon by the Petitioner is *State v. Tipton*. *Tipton* is a court of criminal appeals case that dealt with a mistake in the Clerk’s office stating that:

[i]n the interest of justice, we must agree with the appellant. The motion was received by the Clerk's office but, for some unexplained reason, was not stamped ‘filed’ until more than a week later. Although the 120-day filing requirement of Rule 35(b) is absolute, in such quarters the motion is deemed timely filed as of June 29, 1992. It would be a travesty of justice to hold a pro se appellant, as here, accountable for an oversight, in the office of the Court Clerk, not of his doing.

State v. Tipton, No. 03C01-9305-CR-00142, LEXIS 799, at *1 (Ct. Crim. App. Nov. 22, 1993). We find both of these cases unpersuasive. Neither of the cases deals with the Uniform Administrative Procedures Act. Further, in both cases cited by the Petitioner, the documents at issue were actually received on time. We are not presented with a situation in which the petition was received but not stamp filed. Rather, we are presented with a scenario in which the petition was not sent until the fifty-ninth (59th) day. We are not aware of any cases in this jurisdiction to support the Petitioner’s contention.

Since, the petition was received by the chancery court after the allowable sixty (60) days of the entry from the final order, the court lacks subject matter jurisdiction. The Petitioner did not meet

the jurisdictional requirements of T.C.A. section 4-5-322 (b)(1) and, as a result, cannot obtain judicial review of the administrative judge's order.

As the Petitioner did not satisfy the sixty (60) day requirement, the judgment of the Chancery Court is affirmed and costs of the appeal are assessed against the Petitioner.

WILLIAM B. CAIN, JUDGE